



Notre Dame Law Review

Volume 47 | Issue 3

Article 1

2-1-1972

American Bar Association Standards for Criminal Justice: Prescription for an Ailing System

Tom C. Clark

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Tom C. Clark, *American Bar Association Standards for Criminal Justice: Prescription for an Ailing System*, 47 Notre Dame L. Rev. 429 (1972).

Available at: <http://scholarship.law.nd.edu/ndlr/vol47/iss3/1>

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

THE AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE: PRESCRIPTION FOR AN AILING SYSTEM

Tom C. Clark*

All across the nation there are increasing signs of a ferment—a “happening”—for the improvement and modernization of the criminal justice system. Many of the roots of this movement can be traced back to a major program of the American Bar Association’s Section of Criminal Law, begun in late 1968, to implement the *ABA Standards for Criminal Justice* which are designed to strengthen and improve the system. These Standards are the product of a massive undertaking by the ABA, conceived in 1963, begun in 1964, and still going on. Nothing like this had ever been attempted for the administration of criminal law.

The Standards are suggested—rather than mandatory—guidelines for the states as well as the federal jurisdictions. But the interest they are generating and the momentum of the implementation activity clearly bespeak the timeliness and quality of the product and the existing demand for practical solutions to serious ailments besetting our system. Nor is this activity a mere passing fancy. Rather, it has all the earmarks of a renaissance, a complete overhaul and modernization of systems, in some cases the exchange of a new model for something beyond repair or which, like the famous “One-Hoss Shay,” has seen its day.

The *ABA Standards for Criminal Justice* are providing the bench and bar with a new set of textbooks on criminal procedure and some important substantive law. With increasing frequency, we are seeing these volumes cited in lawyers’ briefs, trial judges’ rulings, and appellate opinions.¹ During the past three years, scores of judicial conference and state bar educational programs have devoted substantial time to explanations of the Standards and how their adoption holds great promise for solving problems plaguing the administration of criminal justice.

The real significance of the Criminal Law Section’s efforts is that they constitute one of the too few occasions when a major study has received as much attention at the implementation end. This significance is further magnified when we realize how many national commissions, state, local, and privately funded studies there have been—all of which produced a wealth of valuable findings and corrective recommendations—but little or no implementation.

There is no special magic in these Standards which accounts for the implementation attention. Rather, they fall into that happy circumstance of being something which happens to be the right thing at the right time. The Standards were born in a climate of deep concern over the burgeoning problems of crime and the correlative crisis in our courts occasioned by overwhelming caseloads, recidivism, and a seeming incapacity of the system to respond to the challenges of the Sixties.

* Associate Justice of the United States Supreme Court, Retired.

¹ See, i.e., Kirshen, *Appellate Court Implementation of the Standards for the Administration of Criminal Justice*, 8 AMER. CRIM. LAW Q. 105 (1970).

In August, 1963, the Institute of Judicial Administration submitted a proposal to the American Bar Association's Sections of Criminal Law and Judicial Administration. It cited the great beneficial influence which had resulted from a project 25 years earlier, the brainchild of the late Arthur T. Vanderbilt, founder of the Institute, who, with the late Judge John J. Parker, pioneered formulation of Minimum Standards of Judicial Administration, so influential in reforming procedures for civil litigation.²

The American Bar Association agreed that the time was ripe for a comparable set of "Minimum Standards" for criminal justice. At the ABA midyear meeting in February, 1964, the Board of Governors authorized the Sections of Criminal Law and Judicial Administration to undertake a pilot study, chaired by Chief Judge J. Edward Lumbard of the United States Court of Appeals for the Second Circuit.³ It is significant to note his statement in the pilot study report which led to ABA approval of the major Standards project:

Standards for criminal justice are, particularly at this time, among the most rapidly developing in our system, largely as a result of significant decisions by the Supreme Court and other courts during the past few years. Vast changes are resulting from decisions regarding indigent defendants, search and seizure, privilege against self-incrimination, interrogation without counsel being present, and post-conviction remedies. A number of Supreme Court decisions have reversed Standards which the Court had reaffirmed only "yesterday," as time is usually measured in the effect of *stare decisis*. While this report was in the course of preparation, such a change was made regarding rights of a citizen under the Fifth Amendment vis-à-vis state authorities, the right of a suspect under interrogation to counsel or to be advised of his constitutional rights and the method for determining whether a confession was voluntary or coerced. National standards have thus been created, and new problems raised, overnight.

As a matter which touches everyone and which, as some say, determines the quality of our civilization, criminal justice evokes public concern as to the standards evolved for its administration to an extent which is not usually found in other fields where lawyers may have primary responsibility to the community. In addition to technical and professional questions, some of the standards for criminal justice involve grave problems of public policy which tend to generate heated controversy, sharp divisions in popular opinion and an insistent demand for their solution. The development and acceptance of standards for this subject, therefore, require considerable skill and serious consideration of representative viewpoints.⁴

At its annual meeting in August, 1964, the Association authorized creation of the ABA Special Committee on Minimum Standards for the Administration of Criminal Justice, specifically mandated to "... proceed to make such studies and investigations as it deems necessary or desirable and to formulate and recommend minimum standards for the administration of criminal justice, all with

2 PILOT STUDY COMMITTEE ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, JOINT REPORT OF ABA SECTIONS OF CRIMINAL LAW AND JUDICIAL ADMINISTRATION 4-5; see also 89 ABA Reports 421-22 (1964).

3 89 ABA Reports 422 (1964).

4 ABA Press Release, Dec. 29, 1964, Min. Stds. for Crim. Justice Project, pp. 1-2.

the view to improving the fairness, efficiency, and effectiveness of criminal justice in state and federal courts. . . ."⁵

The project was intended to last three years and to cost \$750,000. The funding was raised by December, 1964, consisting of equal grants from the American Bar Endowment, the Avalon Foundation and the Vincent Astor Foundation.⁶ Despite the tremendous dedication and persevering application to the task by all participants, the formulation project is still going on, although it appears likely the remaining Standards will receive final approval in August, 1972.

The eight-year duration also gives testimony to the enormity of the undertaking, the volume, scope, and tempo of new and unforeseen developments in the dynamic area of criminal justice, and finally, to the scholarly and high professional quality of the Standards themselves. Chief Justice Warren E. Burger characterized it as "perhaps the most ambitious single undertaking in the history of that great organization" (i.e., the American Bar Association).⁷ On an earlier occasion, he stated:

. . . This project (referring to the ABA Standards) will I think in its own time, emerge and take its place alongside the American Law Institute's Restatements of the law—the creation of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, and other matters of that rank.⁸

Although the venture was initially called "The ABA Project on Minimum Standards," it became clear the final Standards in many respects were more than "minimum"—hence, in August, 1969, that word was dropped.

Before looking at the Standards themselves, it will be meaningful to note the makeup, personnel, and modus operandi of the project.

Judge Lumbard headed the ABA Special Committee which coordinated, directed and guided the entire operation. He was succeeded in 1968 by then United States Court of Appeals Judge Warren E. Burger who remained until his confirmation as Chief Justice of the United States in 1969, when the chairmanship passed to United States District Court Judge William J. Jameson, of Montana, a former president of the ABA.

The ABA Special Committee was assisted by seven Advisory Committees, set up according to functional areas, all comprised of a balanced blend of experts—federal and state judges from the trial and appellate courts, prosecutors, public defenders, private defense lawyers and general practitioners, law enforcement professionals, law school deans and professors.⁹

5 89 ABA Reports 422 (1964).

6 INSTITUTE OF JUDICIAL ADMINISTRATION, AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, April 12, 1966.

7 From a speech to the National Association of Attorneys General, Washington, D.C., February 6, 1970.

8 49 F.R.D. 347, 356 (1969), from a speech at the 1969 Judicial Conference, U.S. Court of Appeals, Tenth Circuit, on "Minimum Standards for Criminal Justice."

9 At first there were only six Advisory Committees, as follows: Police Function; Pretrial Proceedings; Prosecution and Defense Functions; Criminal Trial; Sentencing and Review; Fair Trial and Free Press. (For listing of members, see INSTITUTE OF JUDICIAL ADMINISTRATION, AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, April 22, 1966.) Later in the project, a seventh Advisory Committee was added called Judges' Function.

Apart from the balanced "mix" of experts who drafted the Standards, the product derives high credibility from the screening and approval process. No rubber stamps can be found here. To the contrary, each stage had to run a severe gauntlet. The Advisory Committees drafted "black letter" proposed standards, each supported by detailed commentary to document exhaustive research, consideration of alternatives, and justify the standard selected.

After approval by the Special Committee, the work was widely circulated in tentative draft form among some 12,000 members of the bench and bar, including every member of the ABA Sections of Criminal Law and Judicial Administration. Here the tentative draft underwent extensive debate, suggested amendments and refinements. After consideration of these by the Advisory and Special Committees, the tentative draft was finalized and submitted to the ABA Board of Governors and House of Delegates. Following their approval—here again, not without extensive debate and in some cases, amendments—the draft was marked "Approved" and reprinted in booklet form, ready for nationwide implementation by the Section of Criminal Law.

Seventeen individual volumes of Standards are contemplated, of which fifteen have been published in approved form. They span the entire spectrum of criminal justice from the police function through final post-conviction appeal.¹⁰

The Standards come to grips with many of the crucial problems plaguing society and the system today—the weaknesses, ills, obsolescences, incongruities, and inadequacies which beset the criminal justice process. Chief Justice Burger aptly diagnosed the ailment thusly:

Today the American system of criminal justice in every phase—the police

10 The following is a listing of the titles of all Standards contemplated, together with the date of House of Delegates' final approval of those completed:

APPELLATE REVIEW OF SENTENCES, February, 1968

CRIMINAL APPEALS, August, 1970

DISCOVERY AND PROCEDURE BEFORE TRIAL, August, 1970

ELECTRONIC SURVEILLANCE, February, 1971

FAIR TRIAL AND FREE PRESS, February, 1968

(The implementation of this Standard is not the responsibility of the Section of Criminal Law; rather, the Legal Advisory Committee on Fair Trial and Free Press of the ABA Standing Committee on Public Relations.)

JOINDER AND SEVERANCE, August, 1968

PLEAS OF GUILTY, February, 1968

POST-CONVICTION REMEDIES, February, 1968

PRETRIAL RELEASE, August, 1968

PROBATION, August, 1970

PROVIDING DEFENSE SERVICES, February, 1968

SENTENCING ALTERNATIVES AND PROCEDURES, August, 1968

SPEEDY TRIAL, February, 1968

THE PROSECUTION FUNCTION AND THE DEFENSE FUNCTION, February, 1971

TRIAL BY JURY, August, 1968

THE JUDGE'S ROLE IN DEALING WITH TRIAL DISRUPTIONS, July, 1971

(This is the first segment of the contemplated ABA Standards Relating to the Judges' Function.)

THE JUDGES' FUNCTION

THE POLICE FUNCTION

The ABA Standards are printed in individual volumes. They may be ordered from the American Bar Association Circulation Department, American Bar Center, 1155 East 60th Street, Chicago, Illinois 60637, telephone (312) 493-0533. Cost is \$2 per volume, or \$1 in lots of 10 or more (whether the same or assorted titles).

function, the prosecution and defense, the courts and the correctional machinery—is suffering from a severe case of deferred maintenance. . . .¹¹

President Richard M. Nixon, keynoting the National Conference of the Judiciary at Williamsburg, Virginia, the expressed purpose of which was “to improve the process of justice,” cited these noteworthy symptoms:

. . . unconscionable delays in criminal cases; inconsistent and unfair bail impositions; a steadily growing backlog of work that threatens to make the delays worse tomorrow than they are today. . . .

Overcrowded penal institutions; unremitting pressure on judges and prosecutors to process cases by plea bargaining, *without the safeguards recently set forth by the American Bar Association*; . . .

. . . A system of criminal justice that can guarantee neither a speedy trial nor a safe community cannot excuse its failure by pointing to an elaborate system of safeguards for the accused. Justice dictates not only that the innocent man go free, but that the guilty be punished for his crimes. . . .¹² (Emphasis supplied to denote reference to the *ABA Standards Relating to Pleas of Guilty*.)

The ABA Standards are neither revolutionary nor novel. This must be thoroughly understood in the important implementation process for there is an inherent resistance against being the first by whom the new is tried. Equally important, we should understand that the Standards are not a fixed set of principles being handed down by the ABA as something sacrosanct “from on high.” Nor are they a federal creation to be viewed askance by state and local jurisdictions—rather, they are intended for consideration by all.

In truth, the ABA Standards in most instances represent a distillation and restatement of what is already the best practice and procedure in many jurisdictions. They are a blend of clarification, simplification, unification, renovation, and modernization of the whole system. There are suggested guidelines to be applied to the administration of criminal justice in the fifty states and the federal jurisdiction. The underlying objectives are: (1) to promote effective law enforcement and the adequate protection of the public; and (2) to safeguard and amplify the constitutional rights of those suspected of crime.¹³

Chief Justice Burger, in speaking to the National Association of Attorneys General, said:

It is probably fair to say that no one of the lawyers and judges who worked on this project agrees completely with every Standard which has been promulgated, but I think all of us agree that, taken as a whole, these Standards can be used by the State and Federal systems to bring criminal justice to a new level which is reasonable, workable, and what is more important, fair. The Standards are not intended as a model code; but they

11 From a speech, entitled “Deferred Maintenance,” delivered March 12, 1971, at the National Conference on the Judiciary, Williamsburg, Virginia, *reprinted in* 57 A.B.A.J. 425-30 (1971).

12 Delivered March 11, 1971, *reprinted in* 57 A.B.A.J. 421-24 (1971).

13 89 ABA Reports 422 (1964).

supply a rich background of material from which sound and decent procedures can be developed. Some States must establish such procedures by legislation. In some, it may be done directly by rules promulgated by the highest court. In others it may be done by a rule-making process which involves the concurrence of the judicial branch and the legislative branch, with the judiciary having the initial responsibility for proposing rules of procedures. . . .

. . . properly used and applied, they hold promise of producing greater improvements and more efficiency in the administration of criminal justice than opinions of courts can possibly do. All the courts can do is fix boundaries—others must work out procedures within those limits. The American Bar Association Standards will afford a concrete basis for working out the needed procedures. . . .¹⁴

How do the ABA Standards prescribe for the diagnosed ills with which we are concerned? A few examples will provide the answer. But first we must realize that the Standards are designed to “treat the whole man.” By this, we mean that they do not take the “aspirin for a headache” approach. They are all interrelated—conceived as a group of components, each compatible with the others, and all interdependent. For example, the *ABA Standards Relating to Pretrial Release* suggest procedures for the judicial officer to prescribe conditions of release for the accused tailored to his situation, rather than detaining him by imposition of high money bail. But the effectiveness of this procedure is dependent on a strong probation system to supervise the judge’s orders.

The *ABA Standards Relating to Providing Defense Services* confront a major problem which Chief Justice Burger articulated as follows:

. . . Very early, and this means four and a half to five years ago, we came to a realization that the key to the administration of criminal justice was that there must, in every case of serious consequence, be a counsel for the prosecution, a counsel for the defense, and a judge. And we likened that to a three-legged stool, or a tripod, of which you will be hearing more and more as time goes on, and we concluded that the system cannot work without all three. Like the stool or the tripod, if you can take one leg away or weaken it, you impair the entire system.

. . . The whole purpose of evolving this concept of the three-legged stool, the tripod, was that in the past it was the defendant who was not strong enough because all too often he had no lawyer. The thrust of our reports, as anyone will find upon reading them, is that it is the defense which must be strengthened by having counsel.¹⁵

These Standards do not advocate a public defender or any other specific system. Rather, they provide for local option so long as there is provision for competent counsel, professional independence, supporting services, reasonable compensation, and other safeguards to make the system work.

The *Standards Relating to Pretrial Release* grapple with the explosive

14 From a speech to the National Association of Attorneys General, Washington, D.C., February 6, 1970.

15 49 F.R.D. 347, 358-59 (1969).

questions of preventive detention; whether the right to bail is a constitutional guarantee; the relationship of the policies and practices of the money bail system to the problems of the poor, the economic burdens of our prison detention system, the evils of the professional bondsmen, the serious and increasingly threatening problems of criminal recidivism and its back-breaking and morale-lowering effects on our law enforcement. These Standards squarely address themselves to and suggest positive answers to these and many related issues.

The *Standards Relating to Pleas of Guilty* are among the most important because such an overwhelming majority of our criminal cases end short of trial in a guilty plea. These Standards have been the most frequently cited with favor in appellate decisions. They seek to remove the clouds of suspicion and stigma which have enveloped "plea bargaining." The Standards openly recognize the propriety and value of the practice but they formulate guidelines and safeguards for bringing the negotiations into the open, subjecting them to systematic control; they require equal plea agreement opportunities for defendants occupying similar positions; and, finally, they recommend use of the device only in cases where the public interest and the effective administration of justice will thereby be served. The guidelines cover all three legs of the stool—the prosecution, the defense, and the trial judges.

The *ABA Standards Relating to Speedy Trial* do not deal with the actual trial stage but rather with the vexing problem of accelerating the bringing of the case to trial. They recommend adoption of law or court rules which will specifically define the maximum time which may elapse between the defendant's being charged (or a comparable point in time) and his trial, subject to certain exclusions in protecting both society and the accused. They provide the serious sanction of absolute discharge of the defendant if the time yardstick is not met. Certainly, these Standards constitute a bold challenge to the many jurisdictions vulnerable to charges of long delays in bringing serious criminal cases to trial—no matter what the causes.

Important as are the *Standards Relating to Speedy Trial*, we must not let them overshadow and obscure those *Relating to Discovery and Procedure Before Trial*. In an exposition of the subject before the 1969 Judicial Conference of the United States Court of Appeals for the Tenth Circuit, Judge William H. Erickson summarized the development of discovery in England and the United States, tracing the law through a series of U.S. Supreme Court decisions up to the Federal Rules of Criminal Procedure. He ended on this note:

Moreover, the amendments to the Federal Rules are but a starting point, when the Standards proposed by the American Bar Association are considered that pertain to Discovery and Procedure Before Trial. . . .¹⁶

These Standards clearly proceed from the indisputable premise that the administration of criminal justice is most harmonious with a quest for truth, and

16 From a speech at the 1969 Judicial Conference, U.S. Court of Appeals, Tenth Circuit, on Minimum Standards for Criminal Justice, reported in 49 F.R.D. 347, 465-73. In 1971, Mr. Erickson was appointed to the Supreme Court of Colorado and in July, 1971, he also became Chairman of the ABA Section of Criminal Law.

any procedures which facilitate that quest, without impairing constitutional due process, are laudable. Although our system properly safeguards a criminal case as being adversary in nature, this concept is not violated by encouraging a maximum communication between the adversaries, with protective participation by the trial judge—all with a view to preventing the withholding of evidence, information, and plans which might expedite the truth-finding process and avert a “trial by ambush.”¹⁷

Also embraced within the *Standards Relating to Discovery and Procedure Before Trial* is a suggested novel or “revolutionary” pretrial procedure called “Omnibus Hearing,” so named because it is intended to serve as an all-purpose hearing, dealing with many matters in a simplified, systematic way. A significant feature is the use of a check-list to save time in court and to provide maximum assurance that all conceivable issues are exposed and dealt with early in the process, and without many of the formalities and time-wasting procedures which customarily accompany the raising and disposition of issues; moreover, the issues are raised at one time, instead of being strung out over the pretrial period.¹⁸

The Omnibus Hearing technique has been given extensive experimentation for approximately the past five years in the Southern District of California and the Western District of Texas.¹⁹ United States District Judge Adrian A. Spears, of San Antonio, Texas, reports: “The Omnibus Hearing Project has so revolutionized the handling of criminal cases in this district that we would be lost without it. I know of no problem now being experienced in other courts that cannot be solved by the use of Omnibus.”²⁰

Further, Judge Spears characterized the Omnibus Hearing as “. . . a technique that I think holds the key to the entire concept of a fair, impartial and speedy trial.” Other benefits he enumerated include the “very substantial” saving of time; that the tactics of opposing counsel have changed materially—for the better—since the conferences of counsel are freely pursued, and there is usually full disclosure by both sides; that “the oral motion practice is much more satisfactory, and less demanding, because of the cooperation between counsel, thus eliminating frivolous contentions. If written motions and briefs are desired, the Court retains the right to require them in particular cases; and the reaction of the criminal bar has been very favorable.”²¹ Most significantly, Judge Spears reported on October 15, 1971, that “. . . each judge in this district has one of the highest weighted criminal caseloads in the Nation, yet the median time between indictment and disposition is only 1.8 months. This can be attributed in large measure to the use of Omnibus.”²²

The *Standards Relating to Post-Conviction Remedies* come to grips with a problem which has become a staggering burden to our judges, our prosecutors, our attorneys general, and our taxpayers.

17 49 F.R.D. 347, 438-73 (1969).

18 APPROVED DRAFT, 1970, ABA STANDARDS RELATING TO DISCOVERY AND PROCEDURE BEFORE TRIAL, Introduction, pp. 8-9.

19 *Id.* at 9; see also 49 F.R.D. 347, 438-73 (1969).

20 From a letter dated June 14, 1971, to ABA Crime Prevention and Control Project, by Judge Spears.

21 *Id.*

22 Letter to Chief Judge Wesley E. Brown, U.S. District Court, Kansas City, Kansas.

Our courts have been literally flooded in recent years by appeals of convicted prisoners under such writs as habeas corpus, alleging some injustice or unconstitutionality with the original proceedings. The lay public is often confused at the seemingly endless delays of justice when they witness appeal after appeal in the same case. These Standards provide relief for legitimate questions not originally adjudicated with adequate finality. But they simplify the system, eliminate frivolous or false allegations, provide controls against abuse of the remedy, and are designed to expedite the case to final disposition so that justice will be done.

The *Standards Relating to Sentencing Alternatives and Procedures* deal extensively with one of the most complex and difficult problems in the administration of criminal justice—the sentencing function. The sentencing decision embodies concern for the public interest and safety, as well as the future predictable behavior of the particular offender. Yet the subject of sentencing has not received attention and study commensurate with its importance. There are demonstrably severe and unjustified disparities in sentences imposed in comparable situations.

The sentencing Standards are innovative in many respects. They adopt a liberal approach in their emphasis upon ameliorating the harshness and rigidity of a system of criminal justice which has relied too much upon the palliative of imprisonment in dealing with offenders and has failed to provide sufficiently flexible alternative methods of dealing with individual sentencing situations. They borrow from and refine some concepts of the American Law Institute's Model Penal Code²³ and the Model Sentencing Act.²⁴

The Standards recommend that lay juries should have no part in the sentencing decision, rather, this should be the judge's function. They do not deal with the question of retaining the death penalty as a sentencing alternative or whether the jury should participate in its imposition.

These Standards also conclude that authorized sentences are in most cases higher than are needed in the majority of cases in order to adequately protect the public interests. At the same time, they recognize there are certain types of offenders who present special problems of control and should be subject to substantially longer sentences.

Each sentence should seek to achieve the goal of correction so as to avoid recidivism. Programs which minimize the dislocation of the offender from the community and concentrate upon readjusting him to it offer the best hope of accomplishing this objective. For this reason, the sentence should limit custody, confinement or other penalty to the minimum consistent with the protection of the public interest and the circumstances of the offender. Within these principles, five basic types of sentences should be available to the courts: probation (with limited exceptions such as for murder or treason), partial confinement, total confinement, custody in a special facility, and fine.

Finally, the Standards on sentencing call for supporting services to provide the court with complete information on the background of the offender prior to

23 Published by American Law Institute, May 4, 1962.

24 Published by Advisory Council of Judges of the National Council on Crime and Delinquency, 1963.

sentencing. Such presentence reports should be disclosed to counsel to assure accuracy and to provide opportunity to explain derogatory information and offer submissions on facts relevant to the sentencing decision.

Important as all of the Standards may be, their potential for helping the administration of criminal justice is directly proportionate to the extent and completeness of their implementation. Coordinating this effort has been by far the major program of the ABA Section of Criminal Law, functioning through its Committee on Implementation of Standards for the Administration of Criminal Justice, chaired by the writer since its inception in 1968.²⁵ The implementation process has proven to be an excellent catalyst and opportunity as well for members of the bench and bar to become involved and work through the Association, state and local bar groups, legislatures, and their communities—to provide leadership which has been traditional for lawyers in confronting social challenges.

Tremendous progress has been made, thanks to the wise planning and judicious policies adopted by the Section. Wisely, the Section sought and was granted the coordinating responsibility. Otherwise, like so many other valuable studies, the implementation might have been permitted to drift and pick its own course. Additionally, the Section realized that implementation would be a costly venture requiring considerable outside funding support of a continuing nature over a long period.

Overall coordination of the Section's implementation effort has been continually handled by Louis B. Nichols who was Chairman of the Section during the 1968-69 Association year. He and his predecessor, William F. Walsh, initiated the request which resulted in vesting the responsibility in the Section, and Mr. Nichols thereafter personally raised more than \$100,000 in outside funding to launch the planning and pilot undertaking.²⁶

Judiciously, the Section decided to "make haste slowly" by first selecting three representative "pilot" states to provide planning and feedback experience. This was essential, for implementation throughout all jurisdictions was not a simple matter of each state adopting uniform legislation or court rules. Basic differences exist from state to state as to whether their criminal procedure is dependent on legislative fiat or whether the courts have rule-making powers. Constitutional differences and other variations based on custom, tradition and practice exist. Thus, the pilot states selected were Arizona, predominantly a "Rule" state; Texas, exclusively "statutory"; and Florida, a combination of both.²⁷

Next, the Section determined that an essential "must" step for each state was to take careful inventory of where it currently stood vis-à-vis the Standards. Since many of the Standards were a restatement of existing sound procedures in numerous jurisdictions, this so-called "Comparative Analysis" would provide the state with an accurate blueprint of how many Standards were already im-

²⁵ Report of Section of Criminal Law, 94 ABA Reports 889-90 (1969). *See also* subsequent Annual Reports of Section Chairmen, reprints of which are available from Staff Director H. Lynn Edwards, 1705 DeSales Street, N.W., Washington, D.C. 20036.

²⁶ *Id.*

²⁷ *Id.*

plemented, wholly or partially—and specifically wherein the state exceeded or fell short.

Through funding generously supplied by the American Bar Endowment the Section has been able to provide substantial money to individual states as matching portions to enable them to obtain necessary action grants from their State Criminal Justice Planning Agency which administers block monies under the "Safe Streets Act" and the Law Enforcement Assistance Administration (LEAA). Implementation of the Standards is directly related to comprehensive law enforcement planning envisioned by the LEAA program.

At least 25 states have taken advantage of this help from the Section and have either completed or are working on their Comparative Analyses.²⁸ In accomplishing this vital phase, valuable assistance has been obtained from law schools, law students, law professors, state bar associations, young lawyers, judges, and court administrators.

Another major achievement of the implementation effort has been the nationwide mobilization of a network of liaison and working relationships with powerful organizations representing the bench, bar, law enforcement, criminal justice, legislative staff, community and other lay interests at federal, state, and local levels. These have been invaluable in organizing and spearheading a massive orientation and educational campaign, so necessary to translate the Standards into meaningful, practical concepts.

Included among these groups are the National District Attorneys Association, National College of District Attorneys, National Association of Attorneys General, National Governors' Conference, National Legislative Conference, Council of State Governments, National Legal Aid and Defenders Association, National Association of Defense Lawyers, National Conference of State Trial Judges, National College of State Trial Judges, Appellate Judges' Conference, Conference of Chief Justices, many State Judicial Conferences, the Conference of State Bar Presidents, and the Federal Judicial Center.

Through these teamwork arrangements, the Section has joined with the program planning committees in about twelve states to help structure two- and three-day seminars on the Standards at their annual statewide judicial conferences. These workshops, to which prosecutors, defense lawyers, and law enforcement personnel are invited, have worked wonders in highlighting the Standards and sparking statewide implementation action.²⁹

The Section is cooperating with the Appellate Judges' Conference in planning an intensive national four-day Institute on the Standards, scheduled for February 11-14, 1972, at the New Law Center, Louisiana State University, Baton Rouge, Louisiana. Participants will include approximately 250 members of the highest and intermediate appellate courts from fifty states. Patterned after the National Conference on the Judiciary, it will help to broaden and accelerate a trend already inspired by implementation seminars in many states,

28 See ANNUAL REPORT OF CHAIRMAN, ABA SECTION OF CRIMINAL LAW, 1970-71. For information as to how a state can avail itself of this and other implementation assistance, communicate with Mr. H. Lynn Edwards, Staff Director, Section of Criminal Law, American Bar Association, 1705 DeSales Street, N.W., Washington, D.C. 20036.

29 *Id.*

whereby the Standards are being increasingly implemented by being favorably cited in appellate court opinions.

The National Conference on the Judiciary at Williamsburg, Virginia, in March, 1971, adopted a Consensus Statement which endorsed the Standards, as follows:

The foregoing statements, paraphrasing some of the thoughts expressed by the President and the Chief Justice of the United States, indicate an urgent need for a fundamental re-examination of our judicial system with a view to making it better able to accomplish the goals of criminal justice.

Such re-examination will be aided by the Standards of Criminal Justice promulgated by the American Bar Association. Each state should thoughtfully consider them with a view to adopting them in principle by legislation or rule of court. These carefully prepared standards illuminate many of the concepts hereafter mentioned.³⁰

Many other instances of the Section's implementation activity could be described. For example, the Standards have been made available and their coverage explained to the key staff and legislative personnel from 25 to 30 states which are currently engaged in or planning the updating or codifying of their substantive and procedural criminal laws.³¹ This will enable them to consider the suggested approach of the Standards to the problems. Still other states have set up special committees of their judicial conference or their bar association to submit recommended modernization of their criminal procedures, and the Section has lent them every possible assistance.

The Section is preparing a model set of court rules to help implement the Standards in states having rule-making powers.³² It is maintaining a running compilation of appellate court opinions which cite the Standards.³³ In 1972, after the last contemplated Standard is finally approved, the Section will publish all 17 Standards in a single volume, which will contain all "black letter" Standards recited verbatim, supported by a carefully abridged commentary, plus a much-needed index, and a cross-reference to the valuable unabridged commentary.³⁴

The Section is also attempting to raise funding to support urgently needed research to measure the impact and evaluate the practical benefits of implementation in terms of strengthening and improving the administration of criminal

30 Consensus of the National Conference on the Judiciary, consisting of Findings and Conclusions of the Conference held at Williamsburg, Virginia, March 11-14, 1971, Tom C. Clark, National Chairman.

31 The first Criminal Code Revision Seminar was held June 23-27, 1969, at the University of Michigan Law School, Ann Arbor, co-sponsored by the Council of State Governments, The National Legislative Conference, and The Institute of Continuing Legal Education. The Section of Criminal Law supplied experts for panels on selected ABA Standards for Criminal Justice, in addition to complementary sets of the Standards. Similar cooperation was extended at the second Seminar, held at Brownsville, Texas, March 22-26, 1971.

32 Project Director for this undertaking is Kane Professor of Law Paul E. Wilson, University of Kansas School of Law, Lawrence, Kansas 66044.

33 This is being done for the Section of Criminal Law as a public service by West Publishing Company, St. Paul, Minnesota.

34 Planning for this is being jointly handled by the ABA Special Committee on Standards for the Administration of Criminal Justice and the Section of Criminal Law.

justice. This is essential to gauge their effectiveness and also plan for future adjustments and extensions.

Too, the Section anticipates a future need for carefully drafted model legislation which might be made available to states to implement certain portions of the Standards.³⁵

An ever-enlarging body of educational material is being accumulated by the Section to help answer the huge volume of inquiries regarding the Standards. Already, reprints of lectures, law review articles, speeches, and forms are available to assist those jurisdictions which are just beginning to awaken to the great potential of this work.³⁶

In summing up, it is my hope that all students and all lawyers will join in this crusade to secure the adoption of the Standards of Criminal Justice. There is a vast treasure in them that must be utilized before we are able to improve our criminal justice system. To those who are presently uninformed as to the Standards or inactive as to their implementation, let me say that the hour is late. Unless action is taken before long, a concerned citizenry may take matters into their own hands.³⁷

35 See ANNUAL REPORT OF THE CHAIRMAN OF THE SECTION OF CRIMINAL LAW, 1970-71.

36 For copies of available materials, communicate with H. Lynn Edwards, Staff Director, American Bar Association Section of Criminal Law, 1705 DeSales Street, N.W., Washington, D.C. 20036.

37 Members of the bench and bar and law students who wish to become actively involved in implementing the *ABA Standards for Criminal Justice* and also kept regularly informed are invited to join the ABA Section of Criminal Law. Applications for membership, as well as sets of the Standards, are available by writing to the Section's Staff Director, H. Lynn Edwards, 1705 DeSales Street, N.W., Washington, D.C. 20036.